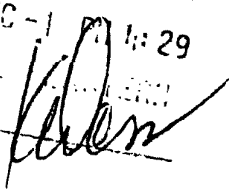


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DEC -1 1:29
BY 

WALTER SESSION, *et al.*,

Plaintiffs,

VS.

RICK PERRY, *et al.*,

Defendants.

§
§
§
§
§
§
§
§

CIVIL ACTION NO. 2:03-CV-354
Consolidated

ORDER

^{#82}
Congressmen DeLay and Barton move to quash subpoenas requiring them to testify by deposition and to produce a broad array of documents and information. Extensive briefs were submitted in support of, and in opposition to, the motion to quash. This court heard oral argument from counsel in a telephonically-conducted hearing. The motion is ready for ruling.

This circuit, along with others that have considered the question, requires a showing of exceptional circumstances before discovery is taken from high-ranking government officials. *See In re FDIC*, 58 F.3d 1055, 1060 (5th Cir. 1995); *In re United States (Kessler)*, 985 F.2d 510, 512 (11th Cir. 1993); *In re United States*

gr

(*Reno*), 197 F.3d 310, 314 (8th Cir. 1999). Counsel cited one case involving an attempt to obtain deposition testimony from Congress members allegedly involved in formulating a state redistricting plan, *Cano v. Davis*, 211 F. Supp.2d 1208 (C.D. Cal. 2002). In that case, the court applied the exceptional circumstances requirement and quashed subpoenas directed to two congressmen regarding the redistricting process in their state, pending further developments in the case. *See id.* at 1227, n.21; No. 01-08477, (C.D. Cal. March 28, 2002) (Order granting motions to quash subpoenas).

Plaintiffs and intervenors assert that Congressmen DeLay and Barton may provide testimony or documents relevant to the intent of the Texas legislature in enacting the challenged redistricting plan. At this early stage, before the plaintiffs and intervenors have presented evidence as to whether the redistricting plan has an unconstitutional or statutorily prohibited effect, this court cannot conclude that such testimony or documents are "essential to [the] case," *In re FDIC*, 58 F.3d at 1062, or whether plaintiffs and intervenors can obtain the information sought from other sources. The record now before this court does not demonstrate that exceptional circumstances justifying the discovery sought are present.

The motion to quash is granted, without prejudice to reconsideration if developments at trial or otherwise enable the parties seeking the discovery to demonstrate that exceptional circumstances make it appropriate.

SIGNED on December 1, 2003.

Patrick E. Higginbotham

PATRICK E. HIGGINBOTHAM
UNITED STATES CIRCUIT JUDGE

Lee H. Rosenthal

LEE H. ROSENTHAL
UNITED STATES DISTRICT JUDGE

T. John Ward

T. JOHN WARD
UNITED STATES DISTRICT JUDGE